

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RAESHAUN D. GODWIN,	§	
	§	No. 4, 2006
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware in and for
v.	§	Kent County
	§	
STATE OF DELAWARE,	§	Cr. I.D. No. 0502018702B
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: June 14, 2006

Decided: June 29, 2006

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices.

**ORDER**

This 29<sup>th</sup> day of June 2006, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Raeshaun D. Godwin, the defendant-below, appeals from his conviction after a Superior Court bench trial for Possession of a Deadly Weapon by Person Prohibited, 11 *Del. C.* § 1448.<sup>1</sup> Godwin presents five claims of error on appeal: (1) there was insufficient evidence to show possession; (2) the indictment failed for lack of particularity; (3) Family Court records showing Godwin's prohibited status were erroneously admitted into evidence; (4) the trial court entered judgment

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<sup>1</sup> 11 *Del. C.* §1448(a)(4) (2005).

against him on the basis of underlying charges that had been *nolle prossed*; and (5) his prior acquittal by a jury for Possession of a Deadly Weapon During the Commission of a Felony (“PDWCF”) precludes his conviction on the Person Prohibited charge. For the following reasons we find no merit to these claims and affirm.

2. Police arrested Godwin at his Kent County trailer home, during the execution of a search warrant issued as part of an ongoing drug investigation, on February 25, 2005. The police found three males present, including Godwin, and recovered drugs and drug paraphernalia from the premises. The search team also recovered a military-style knife under one of the cushions of a couch located in the family room of the trailer home.<sup>2</sup>

3. At trial, a police officer testified that at the time of entry, Godwin was standing behind the couch in which the knife was found. After being advised of his *Miranda* rights, Godwin told the officers that he owned the knife and had placed it in the couch several months before, and that he regularly slept on the couch. Godwin stated that he had bought the knife for protection, his home having been robbed three months before then. At the time the knife was discovered by the search team, Godwin had been secured by the police.

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<sup>2</sup> The blade exceeded 3 inches in length, and otherwise met the criteria for a “deadly weapon” under 11 *Del. C.* §§ 222(4), (5) (2005).

4. Godwin was charged with several drug related offenses, as well as PDWCF, and Possession of a Deadly Weapon by a Person Prohibited (“PDWPP”). At his first Superior Court trial in October 2005, Godwin was found not guilty by a jury of PDWCF, and also of the underlying felony charge of Maintaining a Dwelling for Keeping Controlled Substances. At his second trial in December 2005, after an opening colloquy with the trial judge, Godwin elected to proceed with a bench trial as to the remaining weapons possession charge. The trial court found Godwin guilty of PDWPP.

5. On appeal, Godwin first contends that the evidence presented at trial was insufficient as a matter of law to establish that he was in possession of a weapon. Because the relevant facts are not in dispute, the question is one of law that we review *de novo*.<sup>3</sup>

6. “Possession” of a weapon under 11 *Del. C.* § 1448 means that the weapon is “physically available and accessible to the defendant.”<sup>4</sup> This Court has held that possession requires “accessibility,” not necessarily “actual, physical

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<sup>3</sup> See *Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 99 (Del. 1992) (citing *Fiduciary Trust Co. v. Fiduciary Trust Co.*, 445 A.2d 927 (Del. 1982)).

<sup>4</sup> *Barnett v. State*, 691 A.2d 614, 619 (Del. 1997) (quoting *Sexton v. State*, 397 A.2d 540, 547 (Del. 1979)).

control.”<sup>5</sup> In *Kornbluth v. State*, for example, we affirmed a conviction for PDWCF, even though the defendant was not present when the police, while executing a search warrant, discovered the weapon at his home.<sup>6</sup> Title 11, Section 3504 of the Delaware Code also permits proof of possession of property through “actual or constructive possession.”<sup>7</sup> Addressing the possession of a controlled substance, we have held that constructive possession occurs when a person “has *both the power and the intention* at a given time to *exercise control* over a substance” (emphasis in original).<sup>8</sup>

7. Given the applicable law, we find sufficient evidence in the record to conclude that Godwin had actual or constructive possession of the knife. Godwin acknowledged owning the knife, sleeping near it, and placing it under the sofa cushion, thus ensuring his access to it. Although Godwin was in custody when the search team actually discovered the knife, he was standing by the couch when the police entered, which confirms that the weapon was readily accessible.

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<sup>5</sup> *Childress v. State*, 721 A.2d 921, 930 (Del. 1998) (*Childress* concerned the charge of Possession of a Firearm during the Commission of a Felony (11 Del. C. § 1447A (2005)), however, this Court has analyzed possession under Section 1447, Section 1447A and Section 1448 in a like manner); *see also Gardner v. State*, 567 A.2d 404, 413 (Del. 1989) (quoting *Mack v. State*, 312 A.2d 319, 322 (Del. 1973); *Kornbluth v. State*, 580 A.2d 556, 560-61 (Del. 1990).

<sup>6</sup> *Kornbluth*, 580 A.2d at 561.

<sup>7</sup> 11 Del. C. § 3504 (2005).

<sup>8</sup> *Thomas v. State*, 2005 WL 3031636, at \*2 (Del. Nov. 10, 2005).

8. Godwin next contends that his conviction must be reversed, because the indictment was fatally imprecise for failing adequately to inform him of the charge of PDWPP. The trial judge denied Godwin’s motion for judgment of acquittal on procedural grounds. Because it involves a question of law, we review the sufficiency of the indictment *de novo*. We review the denial of the motion for acquittal separately for abuse of discretion.<sup>9</sup>

9. Where a prior conviction is an element of a charge, the indictment must state that element with “particularity and definiteness,” to enable a defendant to “prepare his defense and to protect himself against double jeopardy.”<sup>10</sup> In this case it would have been sufficient for the indictment to describe the prior charge and identify the court, case number and date of conviction.<sup>11</sup> The indictment here merely recites that Godwin was “adjudicated as delinquent for conduct which, if committed by an adult, would constitute a felony.”<sup>12</sup> The State has conceded and the trial judge acknowledged, that the indictment is deficient for lack of specificity.

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<sup>9</sup> *Merrill*, 606 A.2d at 99; *see Corbin v. State*, 1998 WL 188562 (Del. Apr. 3, 1998) (reviewing claim arising from alleged defect in indictment for abuse of discretion).

<sup>10</sup> *State v. Robinson*, 251 A.2d 552, 554 (Del. 1969) (interpreting 11 *Del.C.* § 470 (recodified as 11 *Del.C.* § 1448)); *see also Carter v. State*, 1995 WL 439234, at \*2 (Del. July 18, 1995) (citing *Robinson*).

<sup>11</sup> *See id.* (identifying the elements of a prior conviction which must be present for an indictment to survive a due process challenge).

<sup>12</sup> Grand Jury Indictment of Raeshaun Godwin, App. to Appellant’s Opening Br. at A-20.

10. Under Superior Court Criminal Rules 12(b)(2) and 12(f), a defense based on a defect in an indictment is waived unless it is raised before trial. Because Godwin did not object to the indictment before trial, he waived this defense. The Superior Court is vested with broad discretion to enforce its rules of procedure,<sup>13</sup> and abuse of discretion will be found only where a ruling is based on “unreasonable or capricious grounds.”<sup>14</sup> Because the trial judge found that the objection could have been made before trial and that Godwin was on notice of his prior convictions, the Superior Court acted within its sound discretion in denying Godwin’s motion for judgment of acquittal.

11. Third, Godwin contends that the Family Court records showing his juvenile delinquency adjudications (second degree burglary, dated May 7, 1997; second degree burglary and assault in a detention facility, dated March 23, 1998) were improperly admitted into evidence. Because Godwin failed to object to the introduction of these records, we review this claim for plain error.<sup>15</sup>

12. Godwin argues that 10 *Del. C.* § 1002, which provides, *inter alia*, that juvenile delinquency proceedings are not “criminal” actions, forbids the use of

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<sup>13</sup> *Barnett*, 691 A.2d at 616.

<sup>14</sup> *Zimmerman v. State*, 628 A.2d 62, 65 (Del. 1993).

<sup>15</sup> SUP. CT. R. 8; D.R.E. 103(d); *Tucker v. State*, 564 A.2d 1110, 1117-18 (Del. 1989) (holding that a party who neglects to raise timely evidentiary objections at trial risks losing the right to raise such claims on appeal, absent plain error).

such records as evidence.<sup>16</sup> For support, Godwin cites *Massey v. State*, which addressed the parameters for the permissible use of a Family Court record in a later Superior Court criminal proceeding.<sup>17</sup>

13. Godwin misconstrues Section 1002 and improperly relies on *Massey*. Section 1002 provides that persons adjudicated as juvenile delinquents are not deemed criminals. Nothing in that statute forbids the use of records of juvenile adjudications in adult criminal proceedings. *Massey* interpreted a statute that has since been repealed, although the substance of that statute is currently incorporated in 10 *Del. C.* § 1009(i). Section 1009(i) provides that a juvenile adjudication is not “admissible against such *child* in any future civil or criminal proceeding in any court,” unless for use in a presentence investigation (emphasis added).<sup>18</sup> Section 1009(i), by its terms, applies only to evidence to be used against a “child.” Godwin, however, was 23 years old at the time of the offense, and 24 years old at the time of the trial. Therefore, neither *Massey* nor Section 1009(i) supports Godwin’s claim.

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<sup>16</sup> See 10 *Del. C.* § 1002 (2005). Godwin does not claim that the letter of Section 1002 forbids use of juvenile delinquency records in his case, but rather, that such use “goes against the spirit” of Section 1002.

<sup>17</sup> *Massey v. State*, 256 A.2d 271, 272 (Del. 1969) (“the use of a Family Court record of the ‘disposition of any child’ is barred as ‘evidence against such child’”).

<sup>18</sup> *Massey* interpreted the language of 10 *Del. C.* § 982(c) (1945), which was subsequently repealed by 58 Del. Laws, Ch. 114, 228 (1971); 10 *Del. C.* § 1009(i) (2005).

14. Title 10 Section 1063(b) of the Delaware Code, in contrast, provides that “[a]ll records concerning any child shall be made available to the Superior Court.”<sup>19</sup> That statute, together with 11 *Del. C.* § 1448, plainly establishes that the disputed records are admissible to establish Godwin’s “prohibited” status.<sup>20</sup> Section 1448(a)(4) criminalizes the possession of a deadly weapon by any person up to the age of 25 who, as a juvenile, “has been adjudicated as delinquent for conduct which, if committed by an adult, would constitute a felony.”<sup>21</sup> Here, the State had to introduce evidence of prior juvenile adjudications in order to convict under Section 1448(a)(4). Godwin’s position would render that provision a practical nullity, a result that the legislature cannot be assumed to have intended.<sup>22</sup> Because the records of Godwin’s prior juvenile adjudications were properly admitted into evidence, there was no plain error.

15. Fourth, Godwin contends that the Court entered judgment against him on the basis of records that, even if admissible, were incorrectly interpreted. He claims that the Attorney General’s DELJIS charge summary shows that three of

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<sup>19</sup> 10 *Del. C.* § 1063 (2005).

<sup>20</sup> 11 *Del. C.* § 1448(a)(4) (2005).

<sup>21</sup> *Id.*

<sup>22</sup> *See Dept. of Labor ex rel. Commons v. Green Giant Co.*, 394 A.2d 753, 758 (Del. Super. 1978) (“A statute should be construed in such way as to produce a harmonious whole, if reasonably possible...it will be presumed that the legislature intended its statute to be effective and operative and the Court will seek means to effectuate the purpose.”).

the underlying juvenile offenses on which the Court may have based its judgment were *nolle prossed* (a fact which the State does not dispute). Because Godwin did not raise this defense at trial, we review his claim for plain error.<sup>23</sup>

16. The flaw in this claim is that the certified Family Court documents, not the DELJIS summary, are what formed the basis for the trial judge's finding as to Godwin's "prohibited" status. Those documents establish that Godwin was adjudicated as delinquent for conduct that would constitute a felony if committed by an adult. Because the lower court relied on the properly admitted Family Court records, the fact of the erroneous charge summary did not "jeopardize the fairness and integrity of the trial process."<sup>24</sup> Accordingly, there was no plain error.

17. Fifth, and finally, Godwin contends that because a jury had acquitted him of PDWCF (a charge arising from the same events at issue here), the evidence is insufficient as a matter of law to conclude that he possessed the knife. Because Godwin moved to acquit at trial for insufficient evidence of possession, we review this claim *de novo*.<sup>25</sup>

18. As held above, there is sufficient evidence of record to conclude that Godwin had actual or constructive possession of the knife. Although not argued in

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<sup>23</sup> *Tucker*, 564 A.2d at 1118.

<sup>24</sup> *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986) (citing *Dutton v. State*, 452 A.2d 127, 146 (Del. 1982)).

<sup>25</sup> *Merrill*, 606 A.2d at 99.

these terms, Godwin appears to contend that the State is collaterally estopped from prosecuting him on the “person prohibited” charge, because he was acquitted of an offense that contained an equivalent possession element. Delaware law recognizes the defense of collateral estoppel in criminal proceedings.<sup>26</sup> A claim will be collaterally estopped if “the same issue was presented in both cases, the issue was litigated and decided in the first suit, and the determination was essential to the prior judgment.”<sup>27</sup> Godwin’s claim ultimately fails, however, because he cannot demonstrate that the possession issue was actually and necessarily determined in the prior litigation—a requirement for collateral estoppel to apply.<sup>28</sup>

19. The record discloses that in a general verdict, a jury found Godwin not guilty of both PDWCF and the underlying offense of Maintaining a Dwelling for Keeping Controlled Substances. The jury could have rationally based its verdict on the ground that Godwin did not possess the knife, or that he did not commit the

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<sup>26</sup> See 11 Del. C. § 208 (2005) (codifying the doctrine of collateral estoppel); *Banther v. State*, 884 A.2d 487, 492 (Del. 2005).

<sup>27</sup> *Sanders v. Malik*, 711 A.2d 32, 33-34 (Del. 1998).

<sup>28</sup> *State v. Machin*, 642 A.2d 1235, 1238 (Del. Super. 1993) (“The burden is on a defendant to demonstrate that the issue in relitigation was actually decided in the first proceeding.”) (citing *Dowling v. United States*, 493 U.S. 342 (1990)); see also *Copening v. United States*, 353 A.2d 305 (D.C. 1976) (“The party asserting an estoppel bar must establish both prerequisite existence of a common factual issue and the fact that such issue was ‘necessarily determined’ in his favor.”).

felony, or that he did not possess the knife during the commission of the felony.<sup>29</sup>

Thus, whether the jury specifically decided the possession issue in Godwin's favor is unknown. Because Godwin cannot show that the possession of a deadly weapon issue was actually and necessarily decided in his favor in the prior adjudication, his claim that collateral estoppel bars his prosecution for PDWPP must fail.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>29</sup> See *Ashe v. Swenson*, 397 U.S. 436, 444 (1970) ("Where a previous judgment of acquittal was based upon a general verdict...this approach requires a court to...conclude whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration.").